

Claimant, a truck mechanic for respondent, was injured April 19, 1995 while replacing a rear leaf spring on a truck. After finding the average of the three impairment ratings to claimant's leg to be 10.67 percent and deducting a 5 percent preexisting impairment to the leg, the ALJ found claimant "entitled to a 5.67% permanent partial

general [sic] disability to the left lower extremity.” But then the ALJ awarded benefits based upon the full 415 weeks instead of the 200 weeks provided by the schedule. K.S.A. 44-510d(a)(16). Claimant argues for a general body award based on work disability. K.S.A. 44-510e(a). The nature and extent of claimant’s disability and whether the reassignment of this case for a decision to an ALJ that did not view claimant’s in-person testimony was a denial of due process are the two issues raised by claimant. Respondent also raises nature and extent of disability as an issue contending the ALJ failed to properly calculate the award for a scheduled injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board is not persuaded by the testimony of Dr. Sharon L. McKinney that claimant’s disability extends beyond the level of the leg. Therefore, after reviewing the record and considering the briefs, the Appeals Board finds the Award by the ALJ should be modified to a 10.67 percent award of permanent partial disability to the leg but should otherwise be affirmed. The Board does so for the reasons stated in the findings and conclusions expressed in the Award by the ALJ. The Board hereby approves those findings and conclusions and adopts them as its own to the extent they are not inconsistent with the findings and conclusions expressed herein.

The Board further finds that claimant was not denied a fair hearing or due process of law by this claim being decided initially by an administrative law judge that did not personally view claimant’s testimony. The Board would point out that all decisions by an administrative law judge are appealable to the Board. The Board’s review is *de novo* on the record. K.S.A. 1997 Supp. 44-555c. Thus, the Board does not view the live testimony of any witness. The ALJ that decided this case did so based upon the same record that the Board is now considering. The Board does not find that the ALJ’s award denied claimant a fair hearing and due process of law. In addition, in this case claimant’s Regular Hearing testimony was completed by deposition. This was done outside the presence of the ALJ. Claimant made no objection to that procedure being followed then and cannot do so now.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated March 27, 1998 should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ronald Eugene Hasty, and against the respondent, KCR International Trucks, Inc., and its insurance carrier, Harco National Insurance Company, for an accidental injury which occurred April 19, 1995, for 76.7 weeks of temporary total disability compensation at the rate of

\$319.00 per week or \$24,467.30, followed by 13.16 weeks at the rate of \$319.00 per week or \$4,198.04, for a 10.67% scheduled injury to the leg, making a total award of \$28,665.34 which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board adopts all remaining orders contained in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frank D. Taff, Topeka, KS
Michael T. Halloran, Kansas City, MO
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director